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Atty. Dkt. No. 039153-0312 (F0799)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Uzodinma Okoroanyanwu et al.

Title: SELF-ALIGNED PATTERN
FORMATION USING DUAL
WAVELENGTHS

Appl. No.: 10/083,914

Filing Date: 02/27/2002

Examiner: Unknown

Art Unit: 2811

CERTIFICATE OF MAILING I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450, on the date below. <u>Faye A. LeClair</u> (Printed Name) <u>[Signature]</u> (Signature) <u>September 12, 2003</u> (Date of Deposit)

**PETITION FOR REVIVAL OF APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

After submitting a nonpublication request with the above-referenced application upon filing, the application became abandoned under operation of law for failure of Applicants to timely and properly notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. Accordingly, this petition is being filed as a protective measure to ensure that any patent that may issue or has issued from the above-referenced application will not be invalid and/or unenforceable due to Applicants' failure to file the appropriate notice.

APPLICANTS HEREBY PETITION FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Required reply and/or fee;
- (2) Petition fee (37 C.F.R. § 1.17(m));
- (3) Statement that the abandonment was unintentional; and
- (4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

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(1) Required reply and/or fee.

The proposed reply for the above-referenced notification in the form of a Request to Rescind Previous Nonpublication Request 35 U.S.C. 122(b)(2)(B) is enclosed herewith.

(2) Petition fee (37 C.F.R. § 1.17(m))

A check in the amount of \$1,300.00 is enclosed for the amount stated in 37 C.F.R. § 1.17(m) to cover the fee for this petition.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

(3) Statement that the abandonment was unintentional.

Applicants hereby state that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional and was done without deceptive intent. Applicants believed in good faith that they were following the applicable and appropriate procedures and practices of the Office. The Office has since (recently) promulgated a "Reminder" that is inconsistent with the prior accepted practices. As a result, the present application is at least theoretically abandoned even though no notice of abandonment has been received from the Office. Applicants file this petition in an overabundance of caution in order to clarify the situation.

Specifically, on March 10, 2003, Applicants' counsel filed a request to rescind the previous nonpublication request. This request to rescind was filed within forty-five (45) days of filing an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. The application in a foreign country or under a multinational treaty was filed on February 21, 2003.

At that time, Applicants' counsel believed that the request to rescind nonpublication provided the appropriate notice of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. Counsel had based the wording of the request on the original form PTO/SB/36 (available until April 2001 but approved for use through October 31, 2002), which counsel believed was sufficient to satisfy the provisions of both 35 U.S.C. § 122(b)(2)(B)(ii) and 35 U.S.C. § 122(b)(2)(B)(iii).

However, just recently, the Office has promulgated the "Reminder that Rescission of a Nonpublication Request is Not Itself a Notice of Foreign Filing" (dated April 11, 2003). This Reminder was published on the website of the Office. Applicants' counsel reviewed this reminder and only then discovered that the request filed on March 10, 2003 did not provide the appropriate notice, according to the Reminder. The form did ask for rescission of the nonpublication request but did not

inform the Office of foreign filing. In other words, Applicants' counsel's reliance on PTO/SB/36 may not have been sufficient to meet the requirements of both 35 U.S.C. § 122(b)(2)(B)(ii) and 35 U.S.C. § 122(b)(2)(B)(iii). Although Applicants' counsel's practices have now changed, according to the Reminder, the request to rescind that was filed in this application was not sufficient. Applicants' counsel's reliance on PTO/SB/36 was done in good faith and clearly without deceptive intent.

Accordingly, Applicants wish to revive the above-referenced application in light of counsel's unintentional failure to file the appropriate notice of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

(4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

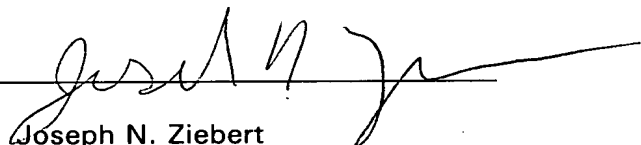
No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Respectfully submitted,

Date

9-11-03

By



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